

1 JUDGE STEINBERG: Same ruling.

2 MR. HONIG: And footnote 3 on page 8, same
3 objection.

4 MS. SCHMELTZER: Well, Your Honor, the arrangement
5 between Concordia Seminary and the stations is certainly a
6 matter that was of concern to the Commission, and, and Ms.
7 Cranberg's knowledge about that arrangement is very material
8 to this case.

9 MS. LADEN: I think -- Your Honor, what I think is
10 relevant about that footnote is Ms. Cranberg's choice of
11 language. Her explanation as to her choice of language in
12 pleadings upon which the Commission relied in the Hearing
13 Designation Order. And for that reason I think it's relevant.

14 JUDGE STEINBERG: Objection is overruled for the
15 reasons stated by Ms. Schmeltzer and Ms. Laden.

16 MR. HONIG: I have no further objections.

17 JUDGE STEINBERG: Ms. Laden?

18 MS. LADEN: I have no objections, Your Honor.

19 JUDGE STEINBERG: Church Exhibit 8 is received.

20 (Whereupon, the document marked for
21 identification as Church Exhibit
22 No. 8 was received into evidence.)

23 MS. SCHMELTZER: Your Honor, Ms. Cranberg is avail-
24 able for cross-examination.

25 JUDGE STEINBERG: Mr. Honig?

1 MR. HONIG: If I may have one moment?

2 (Pause.)

3 MR. HONIG: There are two documents that I'd like to
4 ask be placed before the witness side by side. One of them is
5 Bureau Exhibit 14, if I have that right. I may have it wrong.
6 Can we go off the record for one second, Your Honor?

7 JUDGE STEINBERG: Yes.

8 (Off the record.)

9 (On the record.)

10 JUDGE STEINBERG: Okay. We're on the record. While
11 we were off the record the witness was given a copy to review
12 of Church Exhibit 4, Attachment 7, and NAACP Exhibit 51.

13 It was pointed out by Mrs. Schmeltzer that Exhibit
14 51 was rejected. And why don't you -- and then Mr. Honig
15 started to say something when we went on the record. And why
16 don't you --

17 MR. HONIG: Yes.

18 JUDGE STEINBERG: -- make your statement?

19 MR. HONIG: When it was rejected I indicated that,
20 that the other person whose name appears on the fax sheet,
21 apparently the recipient of NAACP Exhibit 1, was going to
22 testify and that I was going to ask this witness, Ms.
23 Cranberg, the same questions that I asked Mr. Stortz about it,
24 and then reserving the, the right to attempt to, to, to --
25 again to, to -- again move for its admission. It has been

1 identified.

2 MS. SCHMELTZER: If I may--

3 JUDGE STEINBERG: It's been rejected.

4 MR. HONIG: I know.

5 JUDGE STEINBERG: It's been more than identified.

6 MS. SCHMELTZER: That's right.

7 JUDGE STEINBERG: Mrs. Schmeltzer?

8 MS. SCHMELTZER: Mr., Mr. Honig should not have
9 moved it into evidence. He should have waited and then moved
10 it into evidence at a later point. The point is that he did
11 move it into evidence and it's been rejected and he should not
12 have another attempt to move it into evidence.

13 JUDGE STEINBERG: Ms. Laden?

14 MS. LADEN: Your Honor, I, I think he can use
15 anything he wants for cross-examination. He hasn't offered it
16 again. He may not offer it again. If he does, at that point
17 I think we can argue that it's been rejected. But, but I
18 think he can use any document during his cross-examination.

19 JUDGE STEINBERG: My, my feeling is it's a rejected
20 exhibit and it's not in this record.

21 MS. SCHMELTZER: I don't remember that --

22 JUDGE STEINBERG: I don't remember --

23 MS. SCHMELTZER: -- either.

24 JUDGE STEINBERG: Yeah, I don't remember you saying
25 that you were going to attempt to get it in again through Ms.

1 Cranberg. I do remember statements with -- that I made with
2 respect to other exhibits where I -- where you wanted to offer
3 them and I suggested you hold up until you've had a chance to
4 ask Ms. Cransberg-- Cranberg questions. But I don't remember
5 that with respect to this exhibit. My memory is not perfect
6 and obviously we don't have a transcript, so I, I couldn't say
7 for sure. But I'll let you ask your questions and see what
8 happens.

9 MR. HONIG: I appreciate that, Your Honor. Ms.
10 Cranberg, if you would turn first to page -- actually, I think
11 -- note there is a number, but it's 000026 --

12 JUDGE STEINBERG: Which, which document?

13 MR. HONIG: Tab 7 of, of Dennis Stortz's
14 Declaration.

15 JUDGE STEINBERG: Okay. There are little numbers up
16 in the -- stamps numbers up in --

17 MR. HONIG: Yeah.

18 JUDGE STEINBERG: -- the corners. So, why don't you
19 get --

20 MR. HONIG: It's -- that's the number. It's 000026.

21 JUDGE STEINBERG: Oh, okay. Page 26.

22 MR. HONIG: Right.

23 JUDGE STEINBERG: Okay. That's Table 3.

24 MR. HONIG: That's right. And if you would also
25 look at page 6 of the exhibit which is marked NAACP Exhibit

1 51.

2 JUDGE STEINBERG: Which page?

3 MR. HONIG: Six.

4 JUDGE STEINBERG: Thank you.

5 MR. HONIG: And on each page you will see an entry
6 for Ken Lombardi. Now, first, let, let me ask some foundation
7 questions, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. HONIG:

10 Q Ms. Cranberg, do you recognize the document which
11 has been identified as NAACP Exhibit 51?

12 A Personnel at KFUO prepared some draft, some draft
13 list of hires that formed the basis for my -- for Table 3,
14 which is at tab 7 here. I'm not certain that this is --

15 JUDGE STEINBERG: If it's the one.

16 WITNESS: -- a document at tab 51, whether this is a
17 document that I received and, and worked from or not.

18 BY MR. HONIG:

19 Q Well --

20 A I think it -- I see that it's been faxed to me, so I
21 assume that I did receive it and worked from it, but I, I
22 can't remember for certain.

23 Q Now, would, would looking through it slowly and
24 comparing it with Table 3 of, of Church Exhibit 4, tab 7,
25 refresh your memory on the connection between this draft and,

1 and the pleading which is tab 7 of Church Exhibit 4?

2 A I know I received either this document or a document
3 somewhat similar. I also recall receiving a document that
4 had, I believe, the names of employees handwritten as opposed
5 to typed. Again, I can't say with certainty that I received
6 this document or worked off of it.

7 Q Okay. And I'd like to also show the witness at this
8 time a document that has been marked for identification as
9 NAACP Exhibit 50. This is another six-page document.

10 JUDGE STEINBERG: That's in --

11 MS. SCHMELTZER: Wait a minute. It's in the --

12 JUDGE STEINBERG: That's right in the book up here.

13 MR. HONIG: Oh, we have a book. I'm sorry. Is, is
14 the document that's been marked NAACP Exhibit, the document
15 about which you just spoke --

16 JUDGE STEINBERG: Which exhibit? You didn't -- you
17 said NAACP Exhibit but you didn't mention --

18 MR. HONIG: Fifty.

19 JUDGE STEINBERG: -- a number.

20 BY MR. HONIG:

21 Q I'm sorry. Exhibit 50. The document about which
22 you just spoke with the names of the employees in -- written
23 in handwriting.

24 A It looks similar to the document that I recall.
25 Again, it's difficult for me to know for certain. I, I note

1 that on page 2 of this document there is a handwritten nota-
2 tion at the bottom, "did not get into a reporting period." I
3 don't recall ever seeing that sentence in the draft that I
4 had, which raises questions as to whether this is the same
5 document. But it looks similar.

6 Q Okay.

7 A I also have a question. I see that this document
8 begins with the year 1983, whereas our Table 3 I think began
9 with '86.

10 JUDGE STEINBERG: When you say this document you
11 pointed to --

12 WITNESS: I'm -- Exhibit 50.

13 BY MR. HONIG:

14 Q Now, isn't it correct that Table 3 of tab 7 of
15 Church Exhibit 4 begins with 1986 because the EEO Branch had
16 only requested data from 1986 to 1989?

17 A I think that's right.

18 Q Okay. Now, did -- and did you prepare table 3 of
19 tab 7 of Church Exhibit 4?

20 A As I recall, I asked station staff to do a draft of
21 such a table. They sent me a draft, which might have been the
22 documents that are exhibits at tabs 50 and/or 51, and I then
23 edited, made changes in the draft that had been sent to me and
24 had the final version typed up at Arnold & Porter.

25 Q Now, between the time when you received the draft

1 from KFUE and the time when the Opposition to the Petition to
2 Deny, that is, tab 7, was filed -- and to refresh your memory
3 let me bracket the dates. NAACP Exhibit 51 has a fax date of
4 February 15, 1990, and the Opposition to Petition to Deny and
5 Response to Inquiry were dated February 23, 1990.

6 Between that time did you have any conversations
7 with any persons at KFUE regarding the preparation -- regard-
8 ing either the contents of, of what has been marked as NAACP
9 Exhibit 51 or the table which is table 3 of tab 7 of Church
10 Exhibit 14?

11 A Yes. I spoke with at least Dennis Stortz and
12 possibly also with Paula Zika at the station in connection
13 with preparing a final version of what turned out to be
14 table 3.

15 Q When did those -- when did your conversation with
16 Mr. Stortz -- or conversations if there were more than one --
17 with Mr. Stortz occur?

18 A I'm afraid I can't remember specific conversations
19 or specific dates. I remember I had numerous conversations
20 with him both before as he was preparing -- as station staff
21 were preparing a draft and after they had sent it to me and as
22 I was working and, and finalizing the draft.

23 Q What was the substance of those conversations with
24 Mr. Stortz?

25 A Again, not remembering specific conversations, I do

1 recall generally that I asked for in some cases additional
2 information about what recruiting sources had been used in
3 connection with the various hires that were indicated. I
4 remember that I had questions about whether there were any
5 specific skills or specialized requirements in connection with
6 any of the employment positions that were listed. Those sorts
7 of questions.

8 Q And do you remember when you had these conversations
9 with Ms. Zika?

10 A I'm not even certain I had any with Paula. It's
11 possible that I did, but I don't recall any. I do know for
12 certain that I talked at least to Dennis Stortz.

13 Q Okay.

14 A If, if I did have any with Paula Zika, it would have
15 been within the same time period.

16 Q Now, let me again draw your attention to the entries
17 for Ken Lombardi which appear on page 6 of NAACP Exhibit 51
18 and on page 26 of tab 7 of Church Exhibit 4. And if you would
19 read those two entries to yourself, please?

20 JUDGE STEINBERG: Okay.

21 WITNESS: Okay.

22 BY MR. HONIG:

23 Q Okay. Now, there you will see the words on NAACP
24 Exhibit 51 "no minorities applied" and on Church Exhibit 4,
25 tab 7, page 6, it states "none of the five was a minority

1 (race of others submitting resumes cannot be determined)."

2 Would you agree that the meaning of those two versions is, is
3 substantively different?

4 A Yes, I would agree.

5 Q And would you explain how this change came about?

6 A I'm afraid I can't remember exactly how this par-
7 ticular change was made. I do recall that I had a series of
8 conversations with Dennis and, and went through the draft that
9 had been provided me and sought clarifications, raised a
10 number of questions to be sure that all of the information was
11 accurate and, and understandable. So, I'm assuming that as a
12 result of an interchange between us certain changes were made,
13 including this one.

14 Q And when you say you're assuming, do you -- you
15 don't -- you're -- are you -- you mean to convey that you
16 don't know, you don't remember?

17 A I don't remember a specific conversation concerning
18 this particular entry and how that conversation evolved to
19 result in the changes that were made. I, I can say with
20 certainty that I would not have made changes in table 3 that
21 would not have been approved by Dennis or that Dennis would
22 not have agreed was a better or a correct formulation.

23 Q Now, if you would look at page 8 of NAACP Exhibit 51
24 and page 28 of tab 7, Church Exhibit 4, entry for Reverend
25 Mark Spitz in both documents. And again you will see in NAACP

1 Exhibit 1 the words "no women or minorities applied" and in --
2 on page 28 of tab 7 of Church Exhibit 4 it says "race of
3 others sending resumes cannot be determined." Would you
4 explain -- do you agree that that's a substantive change?

5 MS. SCHMELTZER: Your Honor, I'm, I'm going to
6 object to this line of questioning. I just don't see it as
7 relevant at all. The fact that changes were made and the
8 document was, was given to the Commission in more specific
9 form does not mean that there's anything wrong.

10 JUDGE STEINBERG: I, I'll overrule the objection.
11 I'll ask -- I'll let you ask about a few more changes, but I
12 think after you've asked, asked about this one and maybe a
13 couple more, then we can go on to something else.

14 MR. HONIG: I'm just going to do this one and one
15 more.

16 JUDGE STEINBERG: Okay.

17 BY MR. HONIG:

18 Q Okay. And, again, would, would you agree that this
19 is a substantive change -- substantive material change?

20 A Yes, I would agree.

21 Q And what is your explanation for how and why this
22 change occurred?

23 A I would have to give essentially the same response
24 as with respect to your previous question. I can't remember
25 the precise genesis of this change, but I do remember having a

1 series of conversations with Dennis pursuant to which we fine-
2 tuned and finalized the language of this table, and, again,
3 no, no change would have been made without Dennis's concur-
4 rence.

5 Q Now, I would also like to direct your attention to
6 the entries on both these same pages for Cari Perez, and I, I
7 would add that for other entries such as Bob Thomson, who is
8 also on this same page, the same question; and, and, and Tom
9 Koon, who is also on these pages, the same questions could be
10 asked. So, really, you should construe this to refer to all
11 of those three. I don't intend for it to relate to any par-
12 ticular person.

13 You'll note that in NAACP Exhibit 51 the phrase
14 "walk-in" appears in -- as to Tom Koon, it says "Walk-in.
15 Resume on file." As to Cari Perez, it says "Walk-in. Three
16 women candidates. Interviewed for Resumes." And for Bob
17 Thomson it says "Walk-in. Resume on File."

18 Now, for, for Tom Koon and Bob Thomson you'll see
19 that there is the statement "Resume on File" in tab 7 of
20 Church Exhibit 4. For Cari Perez that exhibit says, says
21 "Resume on File. Three women candidates interviewed."

22 MS. SCHMELTZER: Well, Tom Koon's entry has addi-
23 tional language too.

24 MR. HONIG: I know. Your Honor, actually, there
25 are, there are a couple of other examples I'd like to point

1 out. They're all relating to the same question.

2 JUDGE STEINBERG: Why don't you complete these
3 examples before you go into other, other examples?

4 MR. HONIG: Okay.

5 JUDGE STEINBERG: And basically, Ms. Cranberg, do
6 you see the differences in language?

7 WITNESS: Yes.

8 JUDGE STEINBERG: Can you explain them? That's what
9 you're getting at, right?

10 MR. HONIG: Yeah. In fact, I can just identify the
11 other names --

12 JUDGE STEINBERG: Well, let's do these three names.
13 And we've, we've been working with these three. We'll finish
14 these three.

15 MR. HONIG: Okay.

16 JUDGE STEINBERG: So, why don't you explain the
17 differences in language if, if you can?

18 WITNESS: Again, I can't recall specific conversa-
19 tions with Dennis or precisely what my thinking might have
20 been, but my -- I do recall asking Dennis for more detail,
21 asking him to explain the different denominations. I might
22 have asked him what is the difference between resume on file
23 versus walk-in resume on file versus walk-in without resume on
24 file, and I assume that I, on the basis of his answers, I felt
25 that it could be more clearly stated the way I ultimately

1 | stated it in table 3.

2 | MR. HONIG: Your understanding of, of -- is, is your
3 | understanding of -- what is your understanding of the words
4 | "resume on file"?

5 | WITNESS: My understanding is that --

6 | JUDGE STEINBERG: As used in these documents.

7 | MR. HONIG: Yes, as used in these documents.

8 | WITNESS: My understanding is that by various means
9 | the station received resumes or applications from individuals
10 | on an ongoing basis, not necessarily in, in connection with a
11 | specific job opening or in -- not necessarily in response to a
12 | particular advertisement or recruitment effort, but that the
13 | station had in its files a number of applications for persons
14 | who had at one time or another expressed an interest --

15 | MR. HONIG: So, a walk-in --

16 | WITNESS: -- in working at the station.

17 | BY MR. HONIG:

18 | Q So, a "walk-in" could also be a "resume on file"?

19 | A Yes.

20 | Q And similarly an applicant derived from a referral
21 | from a recruitment source previously could also be a "resume
22 | on file"?

23 | A I, I'm not certain now if I focused on this dis-
24 | tinction at the time, but I -- my belief is that when a resume
25 | arrived at the station by means of -- in response to a specif-

1 | ic recruitment effort that we would have listed what that
2 | recruitment effort was rather than designating the -- rather
3 | than providing the designation "resume on file."

4 | Q Do you know that or are -- is that your speculation?

5 | A I can't remember now exactly what Dennis said to me
6 | and what my thought processes were in making these different
7 | designations.

8 | Q Okay.

9 | A So, it's my, it's my speculation as to what I
10 | probably meant.

11 | Q Now, I'm going to point out on page 9 of NAACP 51
12 | and page 29 of tab 7, Church Exhibit 4 --

13 | MS. SCHMELTZER: Your Honor, I thought we were done
14 | with these --

15 | JUDGE STEINBERG: Wait. What, what specific name?

16 | MR. HONIG: Let me just point to these names and
17 | just to see if this refreshes the witness's recollection.

18 | JUDGE STEINBERG: Well, let me, let me just ask a
19 | general question.

20 | JUDGE STEINBERG: Ms. Cranberg, to the extent that
21 | there are any differences in -- between table 3 and NAACP
22 | Exhibit 51, do you have any specific recollection as to why
23 | the changes were made?

24 | WITNESS: No specific recollection. I --

25 | JUDGE STEINBERG: Okay. And you, you -- you're

1 testimony -- if you were asked other examples would your
2 testimony be similar to the testimony with respect to the
3 people we've been talking about? If you want to go through
4 the names in Exhibit No. 50 or in Exhibit No. 51 or in tab 7
5 and see if any of those names if you can say, gee, I remember
6 Lucy Walker. I remember the specific conversation I had with
7 Lucy Walker. Feel free to do so. But I, I just wanted -- do
8 you, do you have any reason to believe that you have -- that
9 your memory would be any better if we asked you about further
10 examples?

11 WITNESS: I, I don't think it would be.

12 JUDGE STEINBERG: Okay. Move on to something.

13 MR. HONIG: All right. Then having done that, Your
14 Honor, I would like to move first NAACP Exhibit 50 into
15 evidence.

16 JUDGE STEINBERG: Mrs. Schmeltzer?

17 MS. SCHMELTZER: I would object. I don't see any
18 basis for this exhibit coming into evidence. I don't think
19 it's relevant. The fact that there was an evolution in the
20 production of table 3 and it's -- the characterization in
21 table 3 evolved over a period of discussions doesn't prove
22 anything. Mr. Honig hasn't shown any material differences.
23 The, the witness couldn't specifically recall Exhibit 50.

24 JUDGE STEINBERG: Ms. Laden?

25 MS. LADEN: I agree with Ms. Schmeltzer.

1 JUDGE STEINBERG: Exhibit 50 is rejected for the
2 reasons stated by Mrs. Schmeltzer and Ms. Laden.

3 (Whereupon, the document marked for
4 identification as NAACP Exhibit
5 No. 50 was rejected.)

6 MR. HONIG: And I would also like to --

7 JUDGE STEINBERG: Wait. I have to do bookkeeping.

8 MR. HONIG: I'm sorry.

9 JUDGE STEINBERG: I, I've got to find the right
10 piece of paper. Okay.

11 MR. HONIG: Okay. Now, I would also like to, to ask
12 to, to -- leave to, to re-introduce Exhibit 51 --

13 JUDGE STEINBERG: You want me to reconsider my
14 ruling --

15 MR. HONIG: To reconsider --

16 JUDGE STEINBERG: -- rejecting Exhibit No. 51?

17 MR. HONIG: That's right.

18 JUDGE STEINBERG: Okay. Mrs. Schmeltzer?

19 MS. SCHMELTZER: I would object for the same rea-
20 sons. In addition to that, the witness testified she couldn't
21 remember if she reviewed Exhibit 51. She received this docu-
22 ment or similar documents. She couldn't say for certainty
23 that she worked off of it.

24 JUDGE STEINBERG: Mrs. Laden?

25 MS. LADEN: I'm sorry, Your Honor.

1 JUDGE STEINBERG: Okay. I've been asked to recon-
2 sider my ruling rejecting Exhibit 51.

3 MS. LADEN: Your Honor, I don't remember the basis
4 for your ruling, but since the witness does not specifically
5 remember the document I don't think there's any new basis for
6 it.

7 JUDGE STEINBERG: Reconsideration -- request for
8 reconsideration is denied.

9 MR. HONIG: Now, Your Honor, I have -- I think the
10 quickest way to do this is I'd like to offer a number of
11 exhibits for a very limited purpose, is ask the witness if she
12 could turn to NAACP Exhibit 53 first. I would ask the witness
13 if she recalls and can identify what the document is.

14 MS. SCHMELTZER: Which, which document are we on?

15 MR. HONIG: NAACP Exhibit 53.

16 WITNESS: Yes. I recall that in April or early May
17 of 1992 KFUEO received a letter of inquiry from the
18 Commission's EEO Branch requesting certain additional informa-
19 tion pertaining to the station's EEO practices and policies.
20 As I recall, Dennis Stortz prepared a draft response which he
21 sent to me. I thereafter may have had telephone conversations
22 with him, but in addition I faxed him some proposed changes,
23 which is my May 5th letter to Dennis that's in this exhibit in
24 the attachments. And at this point in time I was working at
25 Arnold & Porter's Denver office, and that is why I in turn

1 faxed what I had sent to Dennis Stortz to Reed Miller, who was
2 here in Arnold & Porter's Washington office.

3 MR. HONIG: Okay. And you -- the message that you
4 have written -- or see, is that your handwriting on the cover
5 sheet, which is page 1 of the exhibit?

6 WITNESS: Yes, it is.

7 MR. HONIG: And did you in fact have the discussion
8 that you referred to intending to have with, with Mr. -- with,
9 with Reed Miller after sending this fax?

10 MS. SCHMELTZER: Objection, Your Honor. I don't see
11 the relevance of whether Ms. Cranberg had a discussion with
12 Mr. Miller about this.

13 JUDGE STEINBERG: What's the relevance of that?

14 MR. HONIG: Your Honor, it might be best to do this
15 out of the hearing of the witness. May I ask that the witness
16 be excused for one moment?

17 JUDGE STEINBERG: Well, let's, let's continue with
18 this exhibit and then we'll -- you know, let's see where we
19 go. I'd like to move --

20 MR. HONIG: It's going to come up with each of the
21 next several exhibits.

22 MS. SCHMELTZER: Maybe we should have the
23 discussion.

24 JUDGE STEINBERG: Okay. Ms. Cranberg, why don't we
25 excuse you?

1 (Whereupon, the witness was temporarily excused from
2 the room.)

3 JUDGE STEINBERG: What's the universe of exhibits
4 we're talking about?

5 MR. HONIG: 53, 54, 55, 56, and 58 and --

6 JUDGE STEINBERG: 58's been ruled on already.

7 MR. HONIG: 58 has been ruled on?

8 JUDGE STEINBERG: Yeah.

9 MR. HONIG: My notes are inaccurate then, Your
10 Honor. What was your ruling on 58?

11 JUDGE STEINBERG: I don't know. I'll tell you
12 though.

13 MS. SCHMELTZER: 58 was received.

14 JUDGE STEINBERG: 58 was received.

15 MS. SCHMELTZER: But, but I don't think that -- I
16 think that it's a different -- it doesn't have a cover letter
17 to Reed Miller.

18 JUDGE STEINBERG: Okay. You want to forget about
19 58?

20 MR. HONIG: For this purpose -- oh, that, that's
21 right. I needed to ask a different type of question about 58.
22 Forgive me.

23 JUDGE STEINBERG: So, we're talking 53, '4, '5, and
24 '6?

25 MR. HONIG: And, and 59.

1 MS. SCHMELTZER: Well, I'm not sure --

2 MR. HONIG: Wait a minute.

3 MS. SCHMELTZER: -- it's the same issue on here.

4 MR. HONIG: Let me, let me be sure. No. That's
5 right. 59 is a different issue too.

6 Your Honor, the question was raised yesterday
7 concerning the reasons that I wanted these offered, and what I
8 -- would like to do through this witness is simply establish
9 two things: first, the genuineness of the documents and,
10 second, whether the witness had any discussions with Mr. Reed
11 Miller concerning them. I don't want to get into the sub-
12 stance of those discussions. I want to use these exhibits for
13 a very limited purpose and I want to tell -- explain how very
14 limited it is.

15 Mr. Miller testified at his, at his deposition,
16 which is going to be a joint exhibit, that -- or I hope I'm
17 recalling this correctly, that he had a very limited role at
18 -- during the process of, of, of -- since the Petition to Deny
19 was filed and, and up to the Hearing Designation Order.

20 I made the deliberate decision, and I didn't fully
21 explain why I made it, not to then confront Mr. Miller with
22 these documents and ask him: Mr. Miller, isn't it true that
23 here are these documents that show that -- or seem to show
24 that you had discussions with co-counsel throughout this
25 period? The reason I chose not to do that was that, first, I

1 had promised to keep it short. Second, I knew that Mr. Stortz
2 and Ms. Cranberg were going to testify and I was not interest-
3 ed in, in -- in accelerating Mr. Miller's blood pressure by
4 appearing to be catching him in, in a misstatement. I don't
5 believe Mr. Miller misstated. I think that he simply, being
6 elderly and not in the best of health, didn't remember. And
7 the purpose of this is simply, and it will not be used, I
8 promise the Court, to, to suggest that Mr. Miller misstated
9 anything, simply that he, he didn't recall and that this
10 document that he had contacts. It won't be used for the
11 subject matter of the contacts, only for the fact of them.

12 JUDGE STEINBERG: Okay. Let me have Ms. -- I -- the
13 question I had is of what possible -- let's say assume that
14 Reed Miller had been immersed up to his nose in these
15 pleadings, in these documents. Of what possible relevance
16 does that have to the issues in this proceeding?

17 Let me hear from Mrs. Schmeltzer and Ms. Laden, and
18 then you can respond, and then I will rule.

19 MS. SCHMELTZER: It doesn't have any possible
20 relevance.

21 JUDGE STEINBERG: You don't want to, you don't --
22 that's all you want to say?

23 MS. SCHMELTZER: Well, I, I mean, I -- in addition
24 to that, Your Honor, my, my recollection is that Mr. Miller
25 did say that he believed there was one point when Ms., Ms.

1 | Cranberg may have been out of town, that he did review some-
2 | thing. He could have been confronted with these documents at
3 | that point in time to ask him how carefully he reviewed them.
4 | So, I think that the fact that Mr. Honig chose not to cross-
5 | examine Reed Miller on these exhibits is -- lacks some good
6 | faith. He certainly had the opportunity --

7 | JUDGE STEINBERG: Keep good faith out of it. Okay.

8 | MS. SCHMELTZER: All right. He had the --

9 | JUDGE STEINBERG: He had the opportunity.

10 | MS. SCHMELTZER: He had the opportunity to do that.
11 | But whether or not Reed Miller reviewed these drafts has
12 | nothing to do with the issues in this case.

13 | JUDGE STEINBERG: Ms. Laden?

14 | MS. LADEN: I don't think it, it matters whether he
15 | reviewed them or not. I don't see how they could possibly
16 | matter. As far as impeaching Mr. Miller, it seems to me that
17 | you can't impeach the witness without giving the witness an
18 | opportunity to clarify his answer.

19 | JUDGE STEINBERG: Well, and Mr. Honig said he was
20 | not, not going to use this to impeach Mr. Miller. But anyway
21 | -- okay. Why don't you respond and I'll give you a minute,
22 | and then I'll rule.

23 | MR. HONIG: Well, can, can you wait ten seconds
24 | before I start my minute?

25 | JUDGE STEINBERG: Sure. Tell me when you want to

1 start your minute.

2 MR. HONIG: Okay.

3 JUDGE STEINBERG: Start.

4 MR. HONIG: First, Mr. Stortz, and I believe
5 Reverend Devantier, in their direct testimony stated that much
6 of what they -- what KFUD did in, in the pleadings was as a
7 result of taking the advice of counsel. Mr. Miller's deposi-
8 tion included a long introductory statement in which he ex-
9 plained that he had had the benefit of some 40 years of prac-
10 tice of law and he is known to be an esteemed and, and a
11 highly experienced person. Ms. Cranberg's statement begins by
12 saying that she was an associate with the firm, having begun
13 in 1982, and was thus less experienced.

14 Now, it may not be something that Your Honor will
15 find to be of great materiality, but where you have a law firm
16 that's been replaced and, and, and two counsel of, of quite
17 different levels of experience, it, it is an argument which
18 could be made and which I think we have a right to, to, to
19 read as embedded within here that some of the, the approach
20 that was taken was the result of less experienced counsel.
21 It's offered to show that in fact experienced counsel also
22 participated.

23 JUDGE STEINBERG: Okay.

24 MR. HONIG: Is my minute up?

25 JUDGE STEINBERG: Yeah. You've -- let the record

1 reflect you've had a minute and 25 seconds.

2 MR. HONIG: Okay.

3 JUDGE STEINBERG: So, I'm being very generous today.

4 MR. HONIG: I, I appreciate that.

5 JUDGE STEINBERG: I'm going to rule that the ques-
6 tions concerning such as: did you in fact discuss this with
7 Mr. Miller, are irrelevant and, as I said, if -- the station
8 filed certain pleadings and certain documents. The station
9 was assisted by counsel in doing so. Assuming Mr. Miller was
10 totally uninvolved, assuming he was immersed up to his nose, I
11 don't think matters. If -- and I'll, I'll further state that
12 if you wanted to develop this area as to Mr. Miller's specific
13 recollections with respect to specific documents, specific
14 drafts, specific conversations, you had an opportunity to do
15 so with Mr. Miller and I'm not going to repeat the colloquy
16 that we had yesterday.

17 MR. HONIG: Sure.

18 JUDGE STEINBERG: That's on the record. But I would
19 just refer to that. So, let's get Ms. Cranberg back and turn
20 to something else.

21 MR. HONIG: Okay. Actually, I, I would like to go
22 through the motions of, of offering these exhibits at this
23 time. If, if the witness could just identify them and -- just
24 so as to preserve --

25 MS. SCHMELTZER: They've already been identified.